

DOCKET NO.: NNH-CV20-5048391-S : **SUPERIOR COURT**
JANE DOE : **J. D. OF NEW HAVEN**
V. : **AT NEW HAVEN**
BRUCE & JOHNSON'S BRANFORD
MARINA, LLC, ET AL : **NOVEMBER 24, 2020**

OBJECTION TO REQUEST TO REVISE

Pursuant to Practice Book § 10-37, the plaintiff, **JANE DOE**, hereby objects to the following Request to Revise sought by the defendant, **SHM BRUCE & JOHNSON, LLC**, filed under the date of November 12, 2020, in accordance with the attached objections.

FIRST REQUESTED REVISION:

A. Portions of Pleading Sought to be Revised:

Counts 1-10 of the Complaint.

B. The Requested Revision:

Defendant requests that Plaintiff delete Counts 1-10 of the Complaint.

C. Reason for Requested Revision:

On November 5, 2020, Plaintiff withdrew her Complaint as to the improperly named party defendants in Counts 1-10. Practice Book § 10-35 provides that a party may request the deletion of any unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations in an adverse party's pleading. Since Plaintiff has withdrawn her

Complaint against these entities, Plaintiff should delete Counts 1-10 since they are immaterial and unnecessary.

OBJECTION:

The plaintiff raises no objection to the requested revision and will file a Revised Complaint reflecting such revisions.

SECOND REQUESTED REVISION:

A. Portion of Pleading Sought to be Revised:

Current Count 11, Paragraph 6 of the Complaint, which provides, in pertinent part:

6. The spying, watching, surveying, recording and/or documenting of the plaintiff, JANE DOE, in the shower and her injuries resulting therefrom were caused by the negligence and carelessness of the defendant, SHM BRUCE & JOHNSON, LLC, its agents, servants and/or employees, in that it:

o. It knew or should have known that PAUL DELUCA behaved in an inappropriate manner around the public, yet failed to take actions to address this behavior;

u. It failed to warn the plaintiff that PAUL DELUCA had a propensity to behave in a dangerous and/or inappropriate manner;

w. It knew or should have known that PAUL DELUCA was a risk to those on the property;

B. The Requested Revision:

Defendant requests that Plaintiff plead the material facts supporting her statements that Defendant knew or should have known that Paul Deluca was a risk to those on the property or to the public and had a “propensity” to behave in a dangerous manner. The Complaint does not contain allegations which support these assertions.

C. Reason for Requested Revision:

The Plaintiff is required by Section 10-1 of the Practice Book to make a “plain and concise statement of the material facts on which [they] rel[y]...” Section 10-35 of the Practice Book allows a party to request “a more complete or particular statement of the allegations of an adverse party’s pleading.” It is a well established principle that Connecticut is a fact pleading jurisdiction. *Pike v. Bugbee*, 115 Conn. App. 820, 828 (2009)(citing Practice Book § 10–1); *Somers v. Chan*, 110 Conn. App. 511, 528 (2008). Plaintiff’s Complaint is devoid of any factual allegations which even suggest that Defendant could have known of Paul Deluca’s propensity to behave the way he did.

OBJECTION:

The plaintiff hereby objects to the defendant's Request to Revise Count 11 paragraph 6 of her Complaint. A request to revise seeks "an order directing the opposing party to revise his pleading in the manner specified." Royce v. Westport, 183 Conn. 177, 180 (1981). It has been held that a more definite statement should be ordered with caution and never for unsubstantial reasons. Itzkowitz v. Markow, 12 Conn. Sup. 68, 69 (C.P. 1943); *but see* Massa v. Union & New Haven Trust Co., 12 Conn. Sup. 324, 325 (Super. Ct. 1944). "The power of the trial court . . . to direct a fuller and more particular statement of the ground to be claimed or defense contained in any pleading, is largely discretionary, to be exercised with caution, and never for frivolous or unsubstantial reasons." Prince v. Takash, 75 Conn. 616, 619 (1903); *see* Multi Mail v. TEK Electronic Mfg. Co., Superior Court, Geographical Area No. 8, Docket No.: CV 8-1044 (April 27, 1992). The plaintiff's complaint as written, fully, fairly and adequately apprises the defendant of her cause of action. The plaintiff seeks only to plead his complaint as he sees fit rather than as the defendant would have him, as allowed under the Rules of Practice. Bank v. Blakeslee, 4 Conn. Sup. 354 (1936); Freeman's Appeal, 71 Conn. 708, 714; Stephenson, Connecticut Civil Procedure, 2d. Ed., Vol. 1, Sec. 90.

When deciding a request to revise, the issue is not whether the complaint discloses all that the defendant desires to know in the aid of its defense, but whether it discloses the material facts which constitute the cause of action. Kileen v. General Motor's Corporation, 36 Conn. Sup. 347, 348 (1980). So long as the complaint fully discloses the grounds of the claim and sufficiently defines the issues, the request to revise should not be granted. Cervino v. Coratti, 131 Conn. 518,

520 (1945). In Deming v. Nationwide, Ins. Co., 279 Conn. 745 (2006), the Court stated: “In Connecticut, we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically ... [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded and do substantial justice between the parties ... Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the balance of rational comprehension.”

A request to revise is permissible to obtain information to allow the defendant to intelligently plead a defense, but it is never appropriate where the information sought is merely evidential. Kileen, 36 Conn. Sup. at 349. After reading the complaint as a whole, the material facts, issues or grounds of the plaintiff’s claim are clearly discernable to the defendant. The facts as alleged sufficiently apprise the defendant of the basis of the plaintiff’s cause of action. Therefore, a more complete and particular statement of the facts as requested by the defendant is unnecessary and the plaintiff’s objection thereto should be sustained.

THIRD REQUESTED REVISION:

A. Portion of Pleading Sought to be Revised:

Current Count 12, Paragraph 10 of the Complaint.

B. The Requested Revision:

Defendant requests that Plaintiff plead the material facts supporting her statement that Defendant “knew or should have known that its actions would create an unreasonable risk of causing emotional harm or distress or other bodily injury” to the Plaintiff.

C. Reason for Requested Revision:

The Plaintiff is required by Section 10-1 of the Practice Book to make a “plain and concise statement of the material facts on which [they] rel[y]...” Section 10-35 of the Practice Book allows a party to request “a more complete or particular statement of the allegations of an adverse party’s pleading.” It is a well established principle that Connecticut is a fact pleading jurisdiction. *Pike v. Bugbee*, 115 Conn. App. 820, 828 (2009)(citing Practice Book § 10–1); *Somers v. Chan*, 110 Conn. App. 511, 528 (2008). Plaintiff’s Complaint does plead facts which support its legal conclusion that Defendant’s actions created an unreasonable risk of causing emotional harm or distress or other bodily injury to the Plaintiff.

OBJECTION:

The plaintiff hereby objects to the defendant's Request to Revise Count 12 paragraph 10 of her Complaint. A request to revise seeks "an order directing the opposing party to revise his pleading in the manner specified." Royce v. Westport, 183 Conn. 177, 180 (1981). It has been held that a more definite statement should be ordered with caution and never for unsubstantial reasons. Itzkowitz v. Markow, 12 Conn. Sup. 68, 69 (C.P. 1943); *but see* Massa v. Union & New Haven Trust Co., 12 Conn. Sup. 324, 325 (Super. Ct. 1944). "The power of the trial court . . . to direct a fuller and more particular statement of the ground to be claimed or defense contained in any pleading, is largely discretionary, to be exercised with caution, and never for frivolous or unsubstantial reasons." Prince v. Takash, 75 Conn. 616, 619 (1903); *see* Multi Mail v. TEK Electronic Mfg. Co., Superior Court, Geographical Area No. 8, Docket No.: CV 8-1044 (April 27, 1992). The plaintiff's complaint as written, fully, fairly and adequately apprises the defendant of her cause of action. The plaintiff seeks only to plead his complaint as he sees fit rather than as the defendant would have him, as allowed under the Rules of Practice. Bank v. Blakeslee, 4 Conn. Sup. 354 (1936); Freeman's Appeal, 71 Conn. 708, 714; Stephenson, Connecticut Civil Procedure, 2d. Ed., Vol. 1, Sec. 90.

When deciding a request to revise, the issue is not whether the complaint discloses all that the defendant desires to know in the aid of its defense, but whether it discloses the material facts which constitute the cause of action. Kileen v. General Motor's Corporation, 36 Conn. Sup. 347, 348 (1980). So long as the complaint fully discloses the grounds of the claim and sufficiently defines the issues, the request to revise should not be granted. Cervino v. Coratti, 131 Conn. 518,

520 (1945). In Deming v. Nationwide, Ins. Co., 279 Conn. 745 (2006), the Court stated: “In Connecticut, we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically ... [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded and do substantial justice between the parties ... Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the balance of rational comprehension.”

A request to revise is permissible to obtain information to allow the defendant to intelligently plead a defense, but it is never appropriate where the information sought is merely evidential. Kileen, 36 Conn. Sup. at 349. After reading the complaint as a whole, the material facts, issues or grounds of the plaintiff’s claim are clearly discernable to the defendant. The facts as alleged sufficiently apprise the defendant of the basis of the plaintiff’s cause of action. Therefore, a more complete and particular statement of the facts as requested by the defendant is unnecessary and the plaintiff’s objection thereto should be sustained.

FOURTH REQUESTED REVISION:

A. Portion of Pleading Sought to be Revised:

Current Count 12, Paragraph 11 of the Complaint.

B. The Requested Revision:

Defendant requests that Plaintiff plead the material facts supporting her statement that Defendant “knew or should have known that its actions would create an unreasonable risk of causing emotional harm or distress, or other bodily injury” to the Plaintiff.

C. Reason for Requested Revision:

The Plaintiff is required by Section 10-1 of the Practice Book to make a “plain and concise statement of the material facts on which [they] rel[y]...” Section 10-35 of the Practice Book allows a party to request “a more complete or particular statement of the allegations of an adverse party’s pleading.” It is a well established principle that Connecticut is a fact pleading jurisdiction. *Pike v. Bugbee*, 115 Conn. App. 820, 828 (2009)(citing Practice Book § 10–1); *Somers v. Chan*, 110 Conn. App. 511, 528 (2008). Plaintiff’s Complaint does not plead facts which support its legal conclusion that Defendant’s actions created an unreasonable risk of causing emotional harm or distress or other bodily injury to the Plaintiff. This is a boilerplate legal conclusion. If Plaintiff has additional supporting facts, it should plead them.

OBJECTION:

The plaintiff hereby objects to the defendant's Request to Revise Count 12 paragraph 11 of her Complaint. A request to revise seeks "an order directing the opposing party to revise his pleading in the manner specified." Royce v. Westport, 183 Conn. 177, 180 (1981). It has been held that a more definite statement should be ordered with caution and never for unsubstantial reasons. Itzkowitz v. Markow, 12 Conn. Sup. 68, 69 (C.P. 1943); *but see* Massa v. Union & New Haven Trust Co., 12 Conn. Sup. 324, 325 (Super. Ct. 1944). "The power of the trial court . . . to direct a fuller and more particular statement of the ground to be claimed or defense contained in any pleading, is largely discretionary, to be exercised with caution, and never for frivolous or unsubstantial reasons." Prince v. Takash, 75 Conn. 616, 619 (1903); *see* Multi Mail v. TEK Electronic Mfg. Co., Superior Court, Geographical Area No. 8, Docket No.: CV 8-1044 (April 27, 1992). The plaintiff's complaint as written, fully, fairly and adequately apprises the defendant of her cause of action. The plaintiff seeks only to plead his complaint as he sees fit rather than as the defendant would have him, as allowed under the Rules of Practice. Bank v. Blakeslee, 4 Conn. Sup. 354 (1936); Freeman's Appeal, 71 Conn. 708, 714; Stephenson, Connecticut Civil Procedure, 2d. Ed., Vol. 1, Sec. 90.

When deciding a request to revise, the issue is not whether the complaint discloses all that the defendant desires to know in the aid of its defense, but whether it discloses the material facts which constitute the cause of action. Kileen v. General Motor's Corporation, 36 Conn. Sup. 347, 348 (1980). So long as the complaint fully discloses the grounds of the claim and sufficiently defines the issues, the request to revise should not be granted. Cervino v. Coratti, 131 Conn. 518,

520 (1945). In Deming v. Nationwide, Ins. Co., 279 Conn. 745 (2006), the Court stated: “In Connecticut, we long have eschewed the notion that pleadings should be read in a hypertechnical manner. Rather [t]he modern trend, which is followed in Connecticut, is to construe pleadings broadly and realistically, rather than narrowly and technically ... [T]he complaint must be read in its entirety in such a way as to give effect to the pleading with reference to the general theory upon which it proceeded and do substantial justice between the parties ... Our reading of pleadings in a manner that advances substantial justice means that a pleading must be construed reasonably, to contain all that it fairly means, but carries with it the related proposition that it must not be contorted in such a way so as to strain the balance of rational comprehension.”

A request to revise is permissible to obtain information to allow the defendant to intelligently plead a defense, but it is never appropriate where the information sought is merely evidential. Kileen, 36 Conn. Sup. at 349. After reading the complaint as a whole, the material facts, issues or grounds of the plaintiff’s claim are clearly discernable to the defendant. The facts as alleged sufficiently apprise the defendant of the basis of the plaintiff’s cause of action. Therefore, a more complete and particular statement of the facts as requested by the defendant is unnecessary and the plaintiff’s objection thereto should be sustained.

WHEREFORE, for all the foregoing reasons, the plaintiff respectfully requests that her
Objections to the defendant's Request to Revise be sustained.

THE PLAINTIFF,
JANE DOE

By: 431770
Chrysten A. Dufour, Esq.
Moore, O'Brien & Foti
891 Straits Turnpike
Middlebury, CT 06762
Phone: (203)272-5881
Juris No.: 408519
Her Attorneys

CERTIFICATION

I certify that a copy of this document was mailed or delivered electronically or non-electronically on **November 24, 2020**, to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

Thomas L. Tisdale, Esq.
Tisdale Law Offices LLC
10 Spruce Street
Southport, CT 06890
Via Email: ttisdale@tisdale-law.com
COUNSEL FOR SHM BRUCE & JOHNSON, LLC

Paul DeLuca, Pro se
22 Brainerd Road
Branford, CT 06405

431770
Chrysten A. Dufour, Esq.